

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, Colorado 80527-2400

PATENT APPLICATION

ATTORNEY DOCKET NO. 200210246-2

Inventor(s): Kurt Ulmer et al.

Confirmation No.: 2572

Application No.: 10/674,053

Examiner: LEWIS, Ben

Filing Date: September 29, 2003

Group Art Unit: 1795

Title: Fuel Cell modulation and Temperature Control

Mail Stop After Final
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL LETTER FOR RESPONSE/AMENDMENT

Transmitted herewith is/are the following in the above-identified application:

- ☒ Response/Amendment ☐ Petition to extend time to respond
☐ New fee as calculated below ☐ Supplemental Declaration
☒ No additional fee
☒ Other Declaration Under 37 CFR 1.132 Fee\$

CLAIMS AS AMENDED BY OTHER THAN A SMALL ENTITY						
(1) FOR	(2) CLAIMS REMAINING AFTER AMENDMENT	(3) NUMBER EXTRA	(4) HIGHEST NUMBER PREVIOUSLY PAID FOR	(5) PRESENT EXTRA	(6) RATE	(7) ADDITIONAL FEES
TOTAL CLAIMS	22	MINUS	26	= 0	X \$52	\$ 0
INDEP. CLAIMS	5	MINUS	7	= 0	X \$220	\$ 0
<input type="checkbox"/> FIRST PRESENTATION OF A MULTIPLE DEPENDENT CLAIM					+ \$390	\$ 0
EXTENSION FEE	<input type="checkbox"/> 1st Month \$130	<input type="checkbox"/> 2nd Month \$490	<input type="checkbox"/> 3rd Month \$1110	<input type="checkbox"/> 4th Month \$1730		\$ 0
OTHER FEES						\$
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT						\$ 0

Charge \$ 0 to Deposit Account 08-2025. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

Kurt Ulmer et al.

By: /Steven L. Nichols/

Steven L. Nichols

Attorney/Agent for Applicant(s)

Reg No. : 40,326

Date : February 6, 2009

Telephone : 801-572-8066

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Patent Application of

Kurt Ulmer et al.

Application No. 10/674,053

Filed: September 29, 2003

For: Fuel Cell Modulation and
Temperature Control

Group Art Unit: 1795

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SUPPLEMENTAL RESPONSE

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the final Office Action dated **October 10, 2008** (the “final Office Action”), Applicant files herewith a declaration under 37 C.F.R. §1.132 signed by two of the inventors listed on the above-identified patent application.

The attached declaration is filed after the filing of a Notice of Appeal in this application, but prior to the filing of an appeal brief. Consequently, entry of the attached declaration to the record is governed by 37 C.F.R. § 41.33.

According to 37 C.F.R. § 41.33, the attached declaration “may be admitted if the examiner determines that the affidavit or other evidence overcomes all rejections under appeal and that a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented has been made.”

In the present case, only a single prior art reference has been cited, U.S. Patent Application Publication No. 2003/0008184 to Ballantine et al. (hereinafter “Ballantine”). Upon a study of Ballantine, Applicant has determined that Ballantine teaches a fuel cell system, the configuration and operation of which (1) is the exact opposite of what Applicant discloses and claims and (2) does not actually function as described in the Ballantine reference. The attached declaration is offered as evidence of these two facts.

Applicant believes that this declaration is proper under 37 C.F.R. § 41.33 because it overcomes the rejection based on Ballantine, which is the sole rejection pending against the application. Moreover, there is good and sufficient reason why the attached declaration was not submitted earlier.

Firstly, after the Ballantine reference was first cited in this application, Applicant believed that pointing out that Ballantine teaches the opposite of, and away from, the claimed invention would be sufficient to overcome the citation of Ballantine. However, to Applicant’s surprise, the final Office Action continues to rely on Ballantine despite the clear inapplicability of Ballantine’s teachings.

Consequently, the makers of the attached declaration have undertaken a thorough review of Ballantine’s teachings which has required time and resources that were not available or thought necessary previously. Therefore, Applicant may now offer the attached declaration to address the continued and improper reliance on the Ballantine reference in the final Office Action.

Secondly, the counsel prosecuting this application has changed since the response to the initial Office Action. This declaration and response are the first filings in this application made by the undersigned. Consequently, the undersigned did not have an opportunity to present the attached declaration any earlier in the prosecution of this application.

In sum, if admitted, the attached declaration overcomes the rejection based on Ballantine, which is the sole rejection pending against the application. Moreover, good and sufficient reason has been described here to explain why the declaration was not presented earlier. Therefore, entry and consideration of the attached declaration are respectfully requested.

Respectfully submitted,

DATE: February 6, 2009

/Steven L. Nichols/

Steven L. Nichols

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